



- (5) “Just cause was not shown for failure to give 10 days notice.”

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Claimant initially alleged accidental injury on May 16, 1996, later modifying the accident date to May 10, 1996. It is indicated in the record that claimant did not provide notice to respondent until May 29, 1996. On its face, claimant's notice to respondent is outside the ten days required by K.S.A. 44-520. Absent a finding that claimant had just cause for its failure to notify respondent of this injury, the Appeals Board would be obligated to find that claimant failed to provide notice pursuant to K.S.A. 44-520. The May 29, 1996, notice date was found by the Administrative Law Judge, alleged by the respondent in its brief, and acknowledged by the claimant in his brief to the Appeals Board. As such, this date is found to be the appropriate date of notice for purpose of this Order.

Claimant alleged that on either May 10 or May 16, 1996, that he tripped over a stack of plastic boxes slamming his shoulder against metal shelving. Claimant acknowledges he did not advise anyone of the injury at that time although he admitted that his shoulder hurt after the fall. Within three days of the May 10 date, claimant's wife called claimant's doctor to make an appointment because claimant could hardly walk, was dragging his left foot, was having severe pains down his left leg and pain in his back. The pain claimant described was a sharp, intense pain sometimes radiating down into his leg.

It is significant that on May 14, 1996, when claimant went to the doctor, he failed to mention that his symptoms stemmed from a work related accident and did not describe the accident which allegedly occurred on May 10, 1996. Until claimant underwent an MRI and received the results on May 28, 1996, he did not allege a work-related accident on either May 10 or May 16, 1996. Claimant's contention that his May 14, 1996, doctor visit stems from the injury suffered with the respondent creates problems with both dates of accident. It would be impossible for claimant to have a May 14, 1996, visit to the doctor for a work-related injury if the injury occurred on May 16, 1996. It would also be difficult to comprehend how claimant could suffer an injury on May 10, 1996, and fail to mention this on May 14, 1996, when he went to the doctor, suffering significant pain, with radiculopathy, as a result of the very incident he now alleges. Claimant's failure to mention to the doctor any work-related connection to his injury coupled with his later allegation that the May 14, 1996, visit was the result of the work-related fall raises serious questions regarding the credibility of claimant's testimony.

In workers compensation matters it is claimant's burden to prove entitlement to benefits by proving the various conditions upon which claimant's right depends by a preponderance of the credible evidence. See K.S.A. 44-501, as amended, and K.S.A. 44-508, as amended. See *also* Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

A review of the evidence including the medical reports and claimant's own testimony convinces the Appeals Board that claimant's allegations are not supported by a preponderance of the credible evidence regarding whether he suffered accidental injury arising out of and in the course of his employment. The evidence also shows that claimant failed to provide notice of the accident to the respondent within ten days as required by K.S.A. 44-520 and there is no just cause in the record for claimant's failure to so notify respondent. As such, the Appeals Board finds, based upon the evidence in the record, the Order of the Administrative Law Judge should be, and is hereby, affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Floyd V. Palmer dated September 16, 1996, denying claimant benefits, should be, and is, affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November 1996.

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BOARD MEMBER

c: Gregory J. Bien, Topeka, KS  
Wade A. Dorothy, Lenexa, KS  
Floyd V. Palmer, Administrative Law Judge  
Philip S. Harness, Director